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April 30, 2004



BY HAND DELIVERY

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423-0001

ENTERED
Office of Proceedings

APR 30 2004

Part of
Public Record

Re: STB Docket No. AB-6 (Sub-No. 408X), The Burlington Northern
And Santa Fe Railway Company -- Abandonment Exemption -- In
Hamilton and Merrick Counties, NE

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Motion To Amend
Notice of Exemption.

Please time and date stamp the extra copy of the Motion and return it with
our messenger.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first name "Karl" being more prominent than the last name "Morell".

Karl Morell

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO. 408X)



THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
IN HAMILTON AND MERRICK COUNTIES, NE

MOTION TO AMEND NOTICE OF EXEMPTION

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Dated: April 30, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO. 408X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
IN HAMILTON AND MERRICK COUNTIES, NE

MOTION TO AMEND NOTICE OF EXEMPTION

The Burlington Northern And Santa Fe Railway Company ("BNSF"), submits this Motion to the Surface Transportation Board ("Board") seeking to amend its Notice of Exemption in this proceeding to remove the 2.47-mile segment of rail line located between milepost 1.90 and milepost 4.37 from the scope of the requested abandonment exemption.

BACKGROUND

On March 2, 2004, BNSF filed its Notice of Exemption in this proceeding seeking to abandon a 15.60-mile line of railroad located between milepost 1.90, near Aurora, and milepost 17.50, near Central City, in Hamilton and Merrick Counties, NE. The Garden City Western Railway, Inc. ("GCW") filed a notice of intent to file an Offer of Financial Assistance ("OFA") on March 10, 2004. The Board served a Notice of the requested exemption on March 22, 2004. On April 21, 2004, the Board issued a decision in this proceeding which, among other things, extended the due date for GCW's OFA until May 21, 2004.

BNSF's intention in filing the Notice was to abandon the entire line but to retain the tracks on the segment between mileposts 1.90 and 4.37 to store empty rail cars ("Storage Tracks"). BNSF planned to salvage only the part of the line north of milepost 4.37. BNSF's

objective in filing this Motion is two-fold. First, BNSF is concerned that it will lose the needed storage capacity on the Storage Tracks if GCW is successful in acquiring the entire line through the OFA process. Second, in preparing the information requested by GCW, BNSF became aware of title issues affecting a small portion of the Storage Tracks which could arguably subject that particular section to claims of reversion and/or quiet title actions which could cloud BNSF's title and ability to store cars on this segment if the abandonment is ultimately deemed consummated. Consequently, BNSF has decided not to consummate the abandonment of the Storage Tracks even if GCW elects not to pursue the OFA.

In the attached Verified Statement, Richard Batie, BNSF Manager of Shortline Development, explains the importance to BNSF of retaining the Storage Tracks. Mr. Batie also demonstrates that removing the Storage Tracks from the scope of the abandonment will not impair GCW's ability to provide rail service on the remainder of the line. There are no rail-served customers on the Storage Tracks.¹ Consequently, GCW's financial results from operation of the line would not hinge on the ownership of the Storage Tracks. In addition, should GCW be able to attract any traffic on the remainder of the line at some future date, GCW would be able to interchange with the Nebraska Central Railroad Company ("NCRC") at approximately milepost 17.5.² NCRC, in turn, is able to interchange with BNSF at David City, NE. Should the interchange via the NCRC prove impracticable, BNSF would, of course, accommodate a direct interchange with BNSF's Storage Tracks consistent with prevailing legal requirements.

¹ Indeed, no local traffic has moved on any part of the line sought to be abandoned in this proceeding in years.

² NCRC acquired BNSF's former line between milepost 17.50, at Central City and milepost 35.70, at Palmer in 2000. See STB Finance Docket No. 33847, *Nebraska Central Railroad Company – Acquisition Exemption – The Burlington Northern And Santa Fe Railway Company* (not printed), notice served March 27, 2000.

The Board and its predecessor consistently have granted applicants' requests to withdraw or modify the scope of their Notices of Exemption. *See, e.g.*, STB Docket No. AB-439 (Sub-No. 5X), *Dallas Area Rapid Transit – Abandonment Exemption – In Dallas County, TX* (not printed), served April 13, 2000; Docket No. AB-77 (Sub-No. 6X), *Bangor And Aroostook Railroad Company – Abandonment Exemption – In Aroostook County, ME* (not printed), served September 1, 1994; and Docket No. AB-6 (Sub-No. 352X), *Burlington Northern Railroad Company – Abandonment Exemption – In Emmons and McIntosh Counties, ND* (not printed), served July 19, 1994. The premise underlying the Board's decisions in these types of proceedings is that, under the statute, it is the applicant railroad that elects to file the abandonment in the first place and it is the railroad that chooses whether or not to exercise the authority granted by the Board. STB Docket No. AB-83 (Sub-No. 16X), *Maine Central Railroad Company – Abandonment Exemption – In Androscoggin County, ME* (not printed), served September 15, 2000, slip op. at 5. ("When we authorize a carrier to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not. Because we do not compel a carrier to abandon a line, we normally grant a carrier's motion to withdraw its request for abandonment authority.")

Moreover, the Board has allowed applicants to withdraw their abandonment requests where, as here, a notice of intent to file an OFA was filed with the Board. *See, e.g.*, STB Docket No. AB-842X, *Almono LP – Abandonment Exemption – In Allegheny County, PA* (not printed), served January 28, 2004; STB Docket No. AB-88 (Sub-No. 8X), *Bessemer And Lake Erie*

Railroad Company – Abandonment Exemption – Armstrong and Butler Counties, PA (not printed), served February 26, 1997.³

In summary, BNSF respectfully urges the Board to grant the Motion and modify the scope of the abandonment by withdrawing the segment between milepost 1.90 and milepost 4.37. As modified, the line BNSF seeks to abandon is located between milepost 4.37, near Aurora, and milepost 17.50, near Central City.

Respectfully submitted,



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Attorneys for: The Burlington Northern And
Santa Fe Railway Company

Dated April 30, 2004

³ In contrast to the facts at hand where no terms and conditions have been set by the Board, once the Board sets the terms of an OFA withdrawal may no longer be permitted. *Railway Labor Executives Ass'n v. Staten Island R.R.*, 792 F.2d 7 (2d Cir. 1986).

VERIFIED STATEMENT OF RICHARD A BATIE

My name is Richard A. Batie and I am Manager Shortline Development in the Network Development department of The Burlington Northern and Santa Fe Railway Company (BNSF). My business address is 2500 Lou Menk Drive, Fort Worth, Texas, 76131.

I have been employed by BNSF and its predecessor companies since September, 1968, when I started in the traffic department of the former Northern Pacific Railway (NP) at Seattle, Washington. In 1969, I relocated to St Paul, Minnesota. In March 1970, the former NP was merged into the Burlington Northern Railroad (BN). In January 1982, I was named manager, line evaluation and have been involved in branch line abandonments since that time. In July of 1984, I relocated to Fort Worth, Texas, when BN moved its marketing department to Fort Worth. In 1995, the former BN merged with The Atchison Topeka and Santa Fe Railway to become The Burlington Northern and Santa Fe Railway (BNSF).

On March 2, 2004, BNSF filed a "Notice of Exemption" to abandon the 15.60 mile Aurora (Milepost 1.90) to Central City, NE (Milepost 17.50) line. On March 10, 2004, the Garden City Western Railway, Inc. (GCW) filed a notice of intent to file an Offer of Financial Assistance (OFA) to acquire the Aurora to Central City, NE line that BNSF filed to abandon. In light of the OFA request and certain title issues that have come to our attention, this Verified Statement asks the STB to allow BNSF to amend the milepost limits subject to the Notice of Exemption so that BNSF may retain 2.47 miles of trackage from Milepost 1.90 to Milepost 4.37 near Aurora for empty railcar storage.

In preparing the OFA information requested by GCW, it came to my attention that there may be some title issues affecting a small portion of the 2.47-mile segment which could arguably subject that particular section to claims of reversion and/or quiet title actions which could cloud BNSF's title and ability to store cars on this segment if the abandonment is ultimately deemed consummated. Therefore, BNSF has decided not to abandon the 2.47-mile segment even if GCW decides not to pursue the OFA.

As recently as March of 2004, BNSF has used this 2.47 miles of trackage from Milepost 1.90 to Milepost 4.37 for empty railcar storage. In the future, this trackage is needed for empty railcar storage purposes.

With the filing of the Notice of Exemption in this proceeding, BNSF intended to gain authorization from the STB to abandon the Aurora (Milepost 1.90) to Central City, NE (Milepost 17.50) line. BNSF planned to salvage the line from Milepost 4.37 to Milepost 17.50 and use the balance of the line from Milepost 1.90 to Milepost 4.37, a distance of 2.47 miles, for empty railcar storage purposes.

BNSF routinely retains stub ends of abandoned lines throughout its system for car storage purposes. Although car storage needs are seasonal and cyclical in nature, BNSF needs

ample storage space on stub end lines for empty railcar storage purposes to allow for varying demand on BNSF's system.

BNSF needs to retain the trackage from Milepost 1.90 to Milepost 4.37 near Aurora for empty railcar storage purposes. This will allow BNSF to utilize its own trackage for empty railcar storage purposes during slack demand rather than to lease trackage on the open market which increases the cost of furnishing interstate transportation services.

BNSF requests that the STB grant the "Motion to Amend Notice of Exemption" and remove the trackage between Milepost 1.90 and Milepost 4.37, a distance of 2.47 miles, from the scope of the Notice of Exemption, as this 2.47 miles of trackage is needed by BNSF for car storage.

VERIFICATION

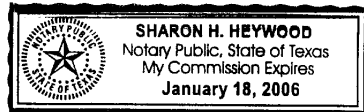
STATE OF TEXAS)
) ss
COUNTY OF TARRANT)

I, Richard A. Batie, being duly sworn, depose and state that I am Manger, Shortline Development in the Network Development department of The Burlington Northern And Santa Fe Railway Company, that I am authorized to make this verification, and that I have read the foregoing Motion To Amend Notice Of Exemption and Verified Statement and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Richard A. Batie

Richard A. Batie
Manager, Shortline Development

SUBSCRIBED AND SWORN TO before me this 28 day of Apr: 1, 2004.



Sharon H. Heywood
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion To Amend Notice Of Exemption was served by U.S. Mail, first class, postage pre-paid, this 30th day of April, 2004 upon:

Daniel A. LaKemper, Esq.
General Counsel
The Garden City Western Railway, Inc.
1318 S. Johanson Road
Peoria, Illinois 61607


Karl Morell